

# THE BOARD OF CHIROPRACTIC EXAMINERS

## JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 1999 REPORT SUBMITTED TO THE DEPARTMENT OF CONSUMER AFFAIRS

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### *Four Year Overview of the Board's Regulatory Program and Background Paper for the 1999 Sunset Review Hearing*

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## *PART 1.*

# **Board of Chiropractic Examiners**

## **BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM**

### **BACKGROUND AND DESCRIPTION OF THE BOARD AND PROFESSION**

The Board of Chiropractic Examiners, also known as the Chiropractic Board, (Board) was created by a 1922 initiative measure that established The Chiropractic Act of California (Act). The Act regulates the 100-year old practice of chiropractic care. The seven-member board is responsible for enforcing the Act and other related state and federal laws regulating doctors of chiropractic (DCs). DCs are independent practitioners (over 70 percent are in solo practice) who provide non-drug, non-surgical health care through treatment of the musculoskeletal and nervous systems and manipulation of the spinal column and bony tissues. Common conditions treated include low back pain, neck pain, and headache. The care provided is generally rehabilitative in nature and involves the management of pain resulting from an injury or accident.

The five professional and two public members of the board are appointed by the Governor. Board members serve four-year terms. As stated in their sunset report, the Board and its ten-member staff see their mission as:

***“protecting Californians from fraudulent or incompetent chiropractic practice, examining applicants for licensure in order to evaluate entry level competence, and enforcing the Chiropractic Initiative Act and Regulations Relating to the Practice of Chiropractic.”***

The Chiropractic Board is one of only two state vocational regulatory programs established directly by an initiative of the people, rather than by a statutory change enacted by the Legislature. The other program is the Osteopathic Act. In comparison, the state’s other 32 vocational regulatory programs, which reside within the Department of Consumer Affairs (Department) were created by statute. The chiropractic and osteopathic boards are further distinguished from these other programs by their complete independence from the Department. Thus, the Chiropractic Board, along with the Osteopathic Board, operates without any oversight from the state’s main consumer agency.

The laws governing chiropractors, as set forth in the Act, various sections of the Business and Professions Code, and Title 16 of the California Code of Regulations, function as a practice act

that requires licensure for individuals performing chiropractic care. With the exception of various fee increases and some challenges to the chiropractic scope of practice, the Act has remained relatively unchanged since its inception. The practice of chiropractic care is regulated through licensure in all 50 states.

There are approximately 14,000 licensed chiropractors regulated by the Board for FY 1998/99. Figure 1 provides Board licensing and enforcement data for the past four years.

Figure 1- Licensing Data

LICENSING DATA FOR [PROFESSION]	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
<b>Total Licensed</b>	Total: 12,907	Total: 13,190	Total: 13,438	Total: 14,013
Active	11,047	11,249	11,553	12,008
Inactive	1,860	1,941	1,885	2,005
<b>Applications Received</b>	Total: 878	Total: 504	Total: 728	Total: 721
<b>Applications Denied</b>	Total: N/A	Total: N/A	Total: 4	Total: 6
<b>Licenses Issued</b>	Total: 456	Total: 652	Total: 566	Total: 723
<b>Renewals Issued</b>	Total: N/A	Total: N/A	Total: N/A	Total: 11,997
<b>Statement of Issues Filed</b>	Total: N/A	Total: N/A	Total: 8	Total: 1
<b>Statement of Issues Withdrawn</b>	Total: N/A	Total: N/A	Total: 0	Total: 0
<b>Licenses Denied</b>	Total: N/A	Total: N/A	Total: 2	Total: 0
<b>Licenses Granted</b>	Total: N/A	Total: N/A	Total: 6	Total: 1

## BUDGET AND STAFF

### Current Fee Schedule and Range

Annual license renewal fees of \$150 are the main funding source for the Board, generating over 80 percent of the board's overall revenues. Unlike most professional regulatory programs, the Board requires annual license renewal. The Board is proposing to increase various administrative fees such as the corporation annual filing fee, duplicate renewal receipt fee, and the reciprocal license application fee. In addition, the Board is planning to establish a \$100 restoration of revoked license/reduction of penalty application fee. The Board indicates that these changes are necessary to allow the Board to recoup its costs for providing various administrative services.

Figure 2 – Fee Schedule

Fee Schedule	Current Fee	Statutory Limit
License Application Fee	<b>\$100</b>	<b>\$100</b>
Examination Fee	<b>None</b>	<b>No Limit</b>
Renewal Fee	<b>\$150</b>	<b>\$150</b>

**Revenue and Expenditure History**

The Board operates on an annual budget of approximately \$1.8 million. Annual revenues are a little over \$2 million, leaving the Board with a high projected reserve of \$3.4 million in the State Board of Chiropractic Examiners Fund. The Board's expenditures have remained relatively even over the past five years with a slight annual increase attributable primarily to personnel services.

Figure 3 – Revenues and Expenditures

REVENUES (Thousands)	ACTUAL				PROJECTED	
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Renewal Fees	\$1,578	\$1,602	\$1,808	\$1,853	\$1,825	\$1,825
Other Fees	63	76	118	99	90	90
Fines & Penalties	93	97	71	51	55	55
Cost Recovery	N/A	18	18	31	<sup>a</sup>	<sup>a</sup>
Income from Investments	116	128	144	164	164	164
Misc. Revenue	25	30	48	35	66	66
TOTALS	1,875	1,951	2,207	2,233	2,200	2,200
EXPENDITURES (Thousands)	ACTUAL				PROJECTED	
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Personnel Services	\$383	\$435	\$515	\$507	619	631
Operating Expenses	93	89	200	399	305	293
Examination Administration	65	60	0	0	0	0
Enforcement	917	783	741	644	656	656
Fixed Expenses	204	237	290	263	233	233
TOTALS	1,662	1,604	1,746	1,813	1,813	1,813

**Expenditures by Program Component**

Figure 4 shows Board expenditures by program component for the past four years since 1995-96. The Board spends its nearly \$2 million annual budget about evenly on enforcement activities and administrative functions. The Board estimates that current-year spending on enforcement will account for \$644,000. Its enforcement spending on a percentage basis is roughly in line

with other health care regulatory boards. However, the Board appears to be spending disproportionately more on its administrative costs than other regulatory programs.

Figure 4 – Expenditures by Program Component

EXPENDITURES BY PROGRAM COMPONENT (Thousands)	FY 95-96	FY 96-97	FY 97-98	FY 98-99	Average % Spent by Program
Enforcement	\$917	\$783	\$741	\$644	48
Examination	65	60	N/A	N/A	4
Administrative	680	761	1,005	1,169	48
TOTALS	1,662	1,604	1,746	1,813	

**Note 1:** During 1997/98 year, the general expenses for operation increased from \$25,000 to \$100,000.

### Fund Condition

As summarized in Figure 5 below, the Board has maintained a fairly large reserve for the past four years as revenues have exceeded expenditures. This reserve is projected to exceed a full year's operating expenses by the end of this budget year and reach a 2.5-year reserve level by 2001. Generally, a prudent reserve of three months operating costs is recommended for all boards. Clearly the Board needs to address this excessive fund reserve either by increasing spending on identified priorities or reducing fee levels.

Figure 5 – Fund Condition

ANALYSIS OF FUND CONDITION (Thousands)	FY 96-97	FY 97-98	FY 98-99	FY 99-00 (Budget Yr)	FY 00-01 (Projected)	FY 01-02 (Projected)
Total Reserves, July 1	\$1,948	\$2,295	\$2,810	\$3,263	\$3,680	\$4,097
Total Rev. & Transfers	1,951	2,207	2,233	2,200	2,200	2,200
Total Resources	3,899	4,502	5,043	5,463	5,880	6,297
Total Expenditures	1,604	1,692	1,780	1,783	1,783	1,783
Reserve, June 30	2,295	2,810	3,263	3,680	4,097	4,514
MONTHS IN RESERVE	17.17	18.94	21.99	24.77	27.57	30.38

## LICENSURE REQUIREMENTS

### Education, Experience and Examination Requirements

To be a licensed chiropractor in California, applicants generally must hold a high school diploma or its equivalent, complete a minimum of 60 semester hours of postsecondary education and a three-year chiropractic training program (consisting of at least 4,400 hours in specified curriculum subjects) at an approved chiropractic college, and pass both a national and state examination. The

Board currently is not considering any changes to the licensure requirements. However, the Board is monitoring the experience of other states with newly established bachelor's degree requirements and efforts to establish this as a national standard by 2002. It should be noted that a recent industry survey indicates that over 60 percent of chiropractors hold a bachelor's degree.<sup>1</sup>

In order to qualify to take the state examination, candidates must first pass the five-part written and clinical National Board of Chiropractic Examiners test, which is given two times a year. The average pass rate on the national examination for California candidates is 58 percent. Over 400 candidates take the California chiropractic examination each year. As Figure 6 shows, the average annual passage rate for the state chiropractic examination from 1997 to 1998 was 90 percent. The Board suggests that the high pass rate on the California test, which is given six times a year, is due in part to candidate preparation for the national examination. The California examination was last validated in 1997, and a new validated version of the examination should be available next year.

Figure 6 – Examination Pass Rate

National Examination Pass Rates (Last Administration 11/97)					
	1994	1995	1996	1997	Total
<b>CANDIDATES</b>	<b>490</b>	<b>955</b>	<b>831</b>	<b>23</b>	<b>2299</b>
<b>PASSAGE RATE</b>	<b>289(59%)</b>	<b>541 (57%)</b>	<b>492 (59%)</b>	<b>11 (48%)</b>	<b>1333 (58%)</b>

California Law Examination Pass Rate				
	1997	1998	1999	Total
<b>CANDIDATES</b>	<b>488</b>	<b>805</b>	<b>568</b>	<b>1861</b>
<b>PASS %</b>	<b>463 (95%)</b>	<b>707 (88%)</b>	<b>522 (92%)</b>	<b>1692 (91%)</b>

As Figure 7 shows, the Board does not have historical data on application processing time. Therefore, it is not possible to determine what, if any, trends apply to average time periods for issuing licenses.

Figure 7 – Application Processing Times

<b>AVERAGE DAYS TO RECEIVE LICENSE</b>	<b>FY 1995/96</b>	<b>FY 1996/97</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>
Application to Examination	N/A	N/A	N/A	<b>135</b>
Examination to Issuance	N/A	N/A	N/A	<b>21</b>
<b>Total Average Days</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>156</b>

<sup>1</sup>“1997 American Chiropractic Association Bi-Annual Statistical Survey” as reported by Christine Goertz in the Journal of the American Chiropractic Association, November 1998.



### **Continuing Education/Competency Requirements**

To help ensure ongoing licensee competency, the Board requires 12 hours of approved continuing education (CE) coursework each year. The CE courses must be relevant to chiropractic care with the requirement that at least four of the hours be in adjustive technique. However, there is no CE testing requirement. The Board is in the process of establishing a CE enforcement program that will rely on random audits to ensure licensee compliance.

Recognizing that untested CE coursework does not guarantee continued competence, the Board is considering alternatives to the current requirements. One alternative would be adding a nationally recognized testing requirement to the CE program to replace the annual coursework requirements for a specified number of years for chiropractors with licenses in good standing.

### **Comity/Reciprocity With Other States**

The Board has no provisions for the temporary licensing of individuals licensed by other states or countries. *All* applicants are subject to California licensure requirements. The Chiropractic Act does provide for reciprocal licensure for out-of-state applicants. However, because of the variation in state licensing standards, the Board does not offer automatic reciprocal licensure for individuals licensed as chiropractors in other states. Rather, licensed individuals from other states applying for California licensure must possess five years of chiropractic experience to be eligible for reciprocal licensure.

The Board is not proposing any changes in its reciprocity policy. Rather it is anticipated that all U.S. chiropractors will be licensed according to the national examination. Notably, the need for state license reciprocity does not appear to be great given that 97 percent of chiropractors practice in one state only.<sup>2</sup>

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<sup>2</sup> Ibid.

## ENFORCEMENT ACTIVITY

Figure 8 – Enforcement Activity

ENFORCEMENT DATA	FY 1995/96	FY 1996/97 <sup>a</sup>	FY 1997/98	FY 1998/99
Inquiries	Total: N/A	Total: N/A	Total: N/A	Total: N/A
Complaints Received (Source)	Total: N/A	Total: N/A	Total: 608	Total: 540
<b>Public</b>			<b>249</b>	<b>179</b>
<b>Licensee/Professional Groups</b>			<b>94</b>	<b>98</b>
<b>Governmental Agencies</b>			<b>95</b>	<b>100</b>
<b>Other</b>			<b>170</b>	<b>163</b>
Complaints Filed (By Type)	Total: 585	Total: 664	Total: 488	Total: 543
<b>Unprofessional conduct</b>	<b>70</b>	<b>627</b>	<b>102</b>	<b>166</b>
<b>Excessive treatment</b>	<b>151</b>	<b>0</b>	<b>16</b>	<b>17</b>
<b>Insurance Fraud</b>	<b>73</b>	<b>24</b>	<b>82</b>	<b>53</b>
<b>Billing disputes</b>	<b>58</b>	<b>0</b>	<b>58</b>	<b>0</b>
<b>Convicted of crime</b>	<b>48</b>	<b>6</b>	<b>42</b>	<b>45</b>
<b>Failure to provide records</b>	<b>65</b>	<b>1</b>	<b>16</b>	<b>34</b>
<b>Sexual misconduct</b>	<b>39</b>	<b>0</b>	<b>32</b>	<b>23</b>
<b>Advertising</b>	<b>4</b>	<b>0</b>	<b>37</b>	<b>55</b>
<b>Section 802s</b>	<b>36</b>	<b>0</b>	<b>10</b>	<b>23</b>
<b>Non-jurisdictional</b>	<b>18</b>	<b>0</b>	<b>20</b>	<b>3</b>
<b>Unlicensed activity</b>	<b>23</b>	<b>0</b>	<b>19</b>	<b>22</b>
<b>Negligence Incompetence</b>	<b>0</b>	<b>1</b>	<b>40</b>	<b>34</b>
<b>Other</b>	<b>0</b>	<b>5</b>	<b>14</b>	<b>68</b>
Complaints Closed	Total: N/A	Total: N/A	Total: 638	Total: 621
Referred for Investigation	Total: N/A	Total: N/A	Total: 66	Total: 79
Compliance Actions	Total: N/A	Total: 50	Total: 68	Total: 95
<b>ISOs &amp; TROs Issued</b>		<b>0</b>	<b>0</b>	<b>0</b>
<b>Citations and Fines</b>		<b>0</b>	<b>0</b>	<b>0</b>
<b>Public Letter of Reprimand</b>		<b>0</b>	<b>0</b>	<b>1</b>
<b>Cease &amp; Desist/Warning</b>		<b>50</b>	<b>68</b>	<b>94</b>
<b>Referred for Diversion</b>		<b>0</b>	<b>0</b>	<b>0</b>
<b>Compel Examination</b>		<b>0</b>	<b>0</b>	<b>0</b>
Referred for Criminal Action	Total: 1	Total: 5	Total: 5	Total: 3
Referred to Attorney General's Office	Total: N/A	Total: 12	Total: 26	Total: 63
<b>Accusations Filed</b>		<b>12</b>	<b>25</b>	<b>62</b>
<b>Accusations Withdrawn</b>		<b>0</b>	<b>0</b>	<b>0</b>
<b>Accusations Dismissed</b>		<b>0</b>	<b>1</b>	<b>1</b>
Stipulated Settlements	Total: 12	Total: 15	Total: 12	Total: 28
Disciplinary Actions	Total: 9	Total: 16	Total: 29	Total: 61
<b>Revocation</b>	<b>4</b>	<b>10</b>	<b>11</b>	<b>27</b>
<b>Revocation Stayed: Suspension</b>	<b>2</b>	<b>4</b>	<b>3</b>	<b>14</b>
<b>Revocation Stayed: Probation</b>	<b>3</b>	<b>2</b>	<b>9</b>	<b>11</b>
<b>Suspension Stayed: Probation</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Voluntary Surrender</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>7</b>
<b>Public Reprimand</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>

Default Decisions	Total: 10	Total: 8	Total: 3	Total: 18
<sup>a</sup> This was the first year the Board utilized the Teale Data Enforcement Tracking System. The data entered into the unprofessional conduct category and was not broken down into separate violation categories.				

### **Enforcement Program Overview**

The Board receives, on average, 650 complaints against licensees per year from either internal or external sources. Like most regulatory programs, this Board's enforcement efforts are complaint driven and the majority of complaints come from the public. The most common issue in consumer complaints is sexual misconduct or other type of inappropriate behavior in a clinical setting. Another significant area of complaint against chiropractors is workers' compensation and insurance fraud, and the Board participates in multi-agency health care fraud task forces. However, it is not clear that the Board has structures in place to receive information on civil actions brought against its licensees.

Figure 8 summarizes the Board's enforcement activities over the past four years. As the table shows in the complaints filed by type category, the largest number of complaints filed (over 30 percent of complaints filed in 1998-99) are in the area of unprofessional conduct.

The Board can respond to internal and external complaints in the following ways: dismissal, informal or formal investigation, accusation filing, and/or disciplinary action. Figure 9 shows the Board's history with disposition of complaints. The Board, on average over the past four years, formally investigated and took disciplinary action against 5 percent of complaints filed. The Board's data show a steady increase in the number of cases going to formal accusation and disciplinary action.

**Figure 9 – Disposition of Complaints**

<b>NUMBER AND PERCENTAGE OF COMPLAINTS DISMISSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION</b>				
	<b>FY 1995/96</b>	<b>FY 1996/97</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>
<b>COMPLAINTS RECEIVED</b>	<b>585</b>	<b>664</b>	<b>488</b>	<b>543</b>
Complaints Closed <sup>a</sup>	N/A	N/A	<b>638</b>	<b>621</b>
Referred for Investigation	N/A	N/A	<b>66 (11%)</b>	<b>79 (15%)</b>
Accusation Filed	N/A	<b>12 (2%)</b>	<b>26 (4%)</b>	<b>62 (11%)</b>
Disciplinary Action	<b>9 (2%)</b>	<b>16 (2%)</b>	<b>25 (4%)</b>	<b>61 (11%)</b>

<sup>a</sup>May include carry-over complaints received in prior fiscal years.

### **Case Aging Data**

As the data in Figure 10 indicates, the Board has taken an average of 2.5 years, over the past two years, to achieve final disposition of enforcement cases. Investigative timeframes appear to be a significant factor in case aging determination.

Figure 10 – Case Aging Information

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Complaint Processing	N/A	121	187	142
Investigations	N/A	233	373	368
Pre-Accusation*	N/A	N/A	166	305
Post-Accusation**	N/A	N/A	326	308
<b>TOTAL AVERAGE DAYS***</b>	<b>N/A</b>	<b>N/A</b>	<b>847</b>	<b>874</b>
*From completed investigation to formal charges being filed.				
**From formal charges filed to conclusion of disciplinary case.				
***From date complaint received to date of final disposition of disciplinary case.				

Due to limited data, it is difficult to draw any overall conclusion about the Board's record with investigative timeframes and the Attorney General's prosecution of enforcement cases. At this time, it appears that the bulk of investigations take between one and two years to complete. Also, it appears that there is an increase in the number of cases that the Board is closing each year.

Figure 11 – Case Aging Data – Investigations and Prosecution

INVESTIGATIONS CLOSED WITHIN:	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
1-90 Days	N/A	6	0	2
91-180 Days	N/A	2	3	2
181-365 Days	N/A	5	7	6
366-730 Days	N/A	9	16	14
731-1096 Days	N/A	3	2	10
More than 1096 Days	N/A	0	2	1
Total Cases Closed	N/A	25	30	35
Investigations Pending	N/A	N/A	63	85
AG CASES CLOSED WITHIN:	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
1 Year	N/A	N/A	5	28
2 Years	N/A	N/A	5	10
3 Years	N/A	N/A	2	3
4 Years	N/A	N/A	0	2
Over 4 Years	N/A	N/A	0	5
Total Cases Closed	N/A	N/A	12	48
Disciplinary Cases Pending	N/A	N/A	71	62

### Cite and Fine Program

The Board currently does not have authority for a cite and fine program, which serves as a less costly administrative alternative to formal disciplinary action. Regulations are pending to establish a cite and fine program for the Board. In addition, it may be necessary to make a

statutory change to add the Board to the general cite and fine authority that exists for all other Department boards.

### **Diversion Program**

Unlike some other health care regulatory boards, this Board does not operate a diversion program. Rather, chiropractors disciplined for substance abuse are required, at their cost, to participate in a Board-approved private rehabilitation program.

### **Results of Complainant Survey**

In general, respondents to the complainant survey seem satisfied with the Board. However, there is one significant area where respondents indicated strong dissatisfaction with the Board – final complaint disposition. The Board’s sunset review report suggests that the poor management of the enforcement program under the previous staff may be responsible for the level of dissatisfaction with the complaint intake process. In response to the survey results, the Board has indicated that it will monitor the complaint process for improved efficiency and better outcomes.

Figure 12 – Consumer Satisfaction Survey

CONSUMER SATISFACTION SURVEY RESULTS*				
QUESTIONS		RESPONSES		
# Surveys Mailed:	250	SATISFIED (3,4,5)		DISSATISFIED (1,2)
# Surveys Returned:	77 (31%)	5	4	3
			2	1
1. Were you satisfied with knowing where to file a complaint and whom to contact?		55 (79%)		15 (21%)
2. When you initially contacted the Board, were you satisfied with the way you were treated and how your complaint was handled?		46 (64%)		26 (36%)
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action the Board would take?		32 (43%)		43 (57%)
4. Were you satisfied with the way the Board kept you informed about the status of your complaint?		32 (43%)		43 (57%)
5. Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?		30 (41%)		43 (59%)
6. Were you satisfied with the final outcome of your case?		16 (23%)		54 (77%)
7. Were you satisfied with the overall service provided by the Board?		25 (36%)		45 (64%)
*The JLSRC directed all board’s and committee’s under review this year, to conduct a consumer satisfaction survey to determine the public’s views on certain case handling parameters. (The Department of Consumer Affairs currently performs a				

similar review for all of its bureau's.) The JLSRC supplied both a sample format and a list of seven questions, and indicated that a random sampling should be made of closed complaints for a four-year period. Consumers who filed complaints were asked to review the questions and respond to a 5-point grading scale (i.e., 5=satisfied to 1=dissatisfied).

## ENFORCEMENT EXPENDITURES AND COST RECOVERY

### *Average Costs for Disciplinary Cases*

Average costs to investigate and prosecute cases over the past two years have ranged from \$12,500 to \$23,500. Expenditures on disciplinary cases appear to be higher for prosecution/hearing costs than for investigation costs (see Figure 13). Based on the data reported, there are no apparent trends in the Board's enforcement costs.

**Figure 13 – Investigation and Prosecution/Hearing Costs Per Case**

AVERAGE COST PER CASE INVESTIGATED	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Cost of Investigation & Experts	\$359,755	\$262,631	\$164,935	\$175,000
Number of Cases Closed	N/A	N/A	30	35
Average Cost Per Case	N/A	N/A	\$5,498	\$5,002
AVERAGE COST PER CASE REFERRED TO AG	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Cost of Prosecution & Hearings	\$596,966	\$520,226	\$578,343	\$469,000
Number of Cases Referred	31	42	32	62
Average Cost Per Case	\$19,257	\$12,386	\$18,073	\$7,565
AVERAGE COST PER DISCIPLINARY CASE	N/A	N/A	\$23,571	\$12,567

### *Cost Recovery Efforts*

The Board has had the authority since 1997 to recover costs associated with investigating and prosecuting enforcement cases. This authority exists through Board regulations, but is not in statute.

Figure 14 reflects the amount of cost recovery the board has requested and received over the past four fiscal years. To date, the Board has collected \$67,000 in cost recovery. Approximately 1 percent of the Board's annual budget is returned each year via cost recovery payments. Based on the data reported, it would appear that the Board is steadily improving its efforts to recoup costs associated with its enforcement efforts. However, the Board needs to be more aggressive in pursuing cost recovery as a means to reduce enforcement expenditures.

The Board may wish to consider participating in the Franchise Tax Board's Interagency Intercept Collections Program, which allows boards to collect unpaid cost recovery from tax refunds and

lottery winnings. In addition, the Board should adopt its cost recovery program in statute so as to remove any question as to whether the Board has the authority to order repayment from its licensees.

Figure 14 – Cost Recovery

<b>COST RECOVERY DATA</b>	<b>FY 1995/96</b>	<b>FY 1996/97</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>
Enforcement Expenditures	<b>\$956,721</b>	<b>\$782,857</b>	<b>\$743,278</b>	<b>\$644,000</b>
Potential Cases for Recovery <sup>a</sup>	<b>N/A</b>	<b>16</b>	<b>12</b>	<b>12</b>
Cases Recovery Ordered	<b>N/A</b>	<b>\$32,435</b>	<b>\$22,750</b>	<b>\$155,767</b>
<b>Amount Collected</b>	<b>N/A<sup>b</sup></b>	<b>\$18,000</b>	<b>\$18,000</b>	<b>\$31,000</b>

<sup>a</sup>The “Potential Cases for Recovery” are those cases in which disciplinary action has been taken based on a violation, or violations, of the Chiropractic Practice Act.

<sup>b</sup>Cost recovery authority was effective July 1996.

## **RESTITUTION PROVIDED TO CONSUMERS**

The Board does not have a formal restitution program to collect monetary damages for patients harmed by licensee incompetence or negligence. According to the Board, restitution in chiropractic cases generally is associated with criminal cases and is ordered by the court prior to the Board ‘s involvement. Thus, the Board does not pursue restitution for individual complainants.

## **COMPLAINT DISCLOSURE POLICY**

The Board’s complaint disclosure policy is similar to that of all other regulatory boards. It discloses disciplinary information upon request and in accordance with the California Public Information Act. The Board releases disciplinary information to the public at the time of case referral to the Attorney General, which is prior to formal filing of accusations. Final disposition on formally charged cases also is available.

The Board uses its regular newsletter that is circulated among licensees and the medical community to publish information on disciplinary actions. In addition, the Board reports monthly disciplinary information to the nations Chiropractic Information Network, which is available to the public. Lastly, the Board plans to provide disciplinary information on its Internet website.

## **CONSUMER OUTREACH AND EDUCATION**

The Board operates a fairly standard consumer outreach program including distribution of consumer education materials, use of the media, and publication of both a biannual licensee newsletter and disciplinary report. In addition, the Board's new Internet website will contain consumer information, complaint instructions, and enforcement data.



## *PART 2.*

### *BACKGROUND PAPER FOR HEARING*

## **BOARD OF CHIROPRACTIC EXAMINERS**

### **IDENTIFIED ISSUES, BACKGROUND CONCERNING ISSUES, STAFF RECOMMENDATIONS AND QUESTIONS FOR THE BOARD**

**CURRENT SUNSET REVIEW ISSUES:** This is an initial review of the Board of Chiropractic Examiners pursuant to Section 101.1 and Section 473.15 of the Business and Professions Code. The following are issues or problem areas identified by JLSRC staff, along with background information concerning the particular issue. Where necessary, the staff of the JLSRC have made preliminary recommendations for members and Department of Consumer Affairs to consider. There are also questions that staff have prepared concerning the particular issue. The Board was provided with these questions and should address each one.

#### **ISSUE #1. SHOULD THE BOARD RESIDE WITH THE DEPARTMENT OF CONSUMER AFFAIRS AND SHOULD THE CHIROPRACTIC ACT AND ITS RELATED REGULATIONS BE CODIFIED IN STATUTE?**

**BACKGROUND:** Unlike the state's 32 other professional licensing programs that operate as semi-independent units of the Department of Consumer Affairs (Department), this Board is completely independent of Department oversight and is not subject to direct legislative authority.

This Board is unique because its licensing act was created by an initiative in 1922 rather than by statutory enactment. Therefore, the Chiropractic Act (Act) and its supporting regulations are uncoded and past changes made to the Act had to be submitted to the voters for approval. Furthermore, it is unclear whether the Legislature has the authority to further amend, revise, supplement, or codify provisions of the Act.

The Act currently provides for a Board consisting of five professional (doctors of chiropractic) members and two public members. The Governor appoints all members of the Board. The Board is granted exclusive power to issue a license to those who graduate from a chiropractic medical school. This Board operates freely without any oversight of a state department or agency, nor does it have to meet any of the general requirements and provisions established under Division 1 and 1.5 of the Business and Professions Code for all other licensing boards under the

Department. Past legislative amendments to the Act have been through voter-approved initiatives<sup>3</sup>. Thus, the Legislature has no direct ability to amend the Act. Therefore, it has no authority to place a sunset date on this Board, and may not have the authority to subject it to the jurisdiction of the Department.

A 1983 court case related to the Osteopathic Board, which also was created by initiative, suggests that the Legislature does have the authority to make changes to practice acts created by initiative. Although the court decided in favor of the Legislature on this occasion, there is still some question as to the full extent of the Legislature's authority. Therefore, there should be definitive clarification of the Legislature's authority to propose statutory changes that are necessary to improve the overall effectiveness and efficiency of this Board. Rather than having to pursue litigation to implement changes to the Act, both the Department and the Legislature should be vested with oversight of the Board. The current structure has produced a perception of a lack of accountability on the part of the Board.

The Center for Public Interest Law (CPIL) have recommended that this Board, along with the Osteopathic Board, be treated the same as other licensing boards under the Department, and that their initiative provisions be codified and subject to change or revision by the Legislature without having to seek a vote of the electorate. In 1993, the Legislative Analyst's Office (LAO) recommended that all boards be consolidated under the Department including the Board of Chiropractors. It should be noted that there is precedent for the Board to be a part of the Department. Apparently, the Board, on its own initiative, decided by resolution to join the Department sometime in the 1940s and then left the Department in the mid 1970s. Additionally, codification of the Act and supporting regulations would protect the Board against legal challenges questioning their authority.

Prior to placing the Board under Department jurisdiction and codifying the Act, it should be made clear that the Legislature may not repeal the licensing of this profession. The Chiropractic Act was adopted by initiative in response to efforts by other segments of the medical community to prohibit their right to existence altogether. While it seems unlikely in this day and age that anyone would suggest abolishing licensure for chiropractors, there is some justifiable concern that moving the Board to the Department could potentially jeopardize the standing of the chiropractic profession. However, the benefits to consumer protection from rational government organization, modern public resource management, and reasonable legislative oversight outweigh any concerns the profession may have.

**STAFF RECOMMENDATION:** *The law should be amended by a vote of the electorate, placed on the ballot by the Legislature, ensuring the existence of licensure for Doctors of*

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<sup>3</sup> A partial history of amendments to the Chiropractic Act that were approved by initiative includes: Chapter 771, Statutes of 1975, SB 984, Alquist which increased the Board application fee from a maximum of \$35 to \$50 and the license renewal fee from a maximum of \$25 to \$50; Chapter 263, Statutes of 1976, SB 1416, Rodda which added two public members to the Board's existing five professional member composition; Chapter 306, Statutes of 1978, AB 2380, McVittie which increased the application and renewal fees from a maximum of \$50 to \$75; Chapter 307, Statutes of 1976, SB 1671, Rodda which changed the requirements for approval of chiropractic colleges; and Chapter 533, Statutes of 1983, SB 286, Rosenthal which increased the application and license renewal fees from a maximum of \$75 to \$100 and \$150, respectively.

*Chiropractic in California, but in all other respects treating the regulatory program the same as all other health practitioner licensing boards.*

**QUESTION #1 FOR THE BOARD:** *Please indicate if the Board has any concerns about amending the initiative act so that it may be treated like other licensing boards under the Department of Consumer Affairs. In addition, please indicate the extent to which some or all of the changes in law necessary to accomplish parity of treatment could be accomplished without a vote of the electorate.*

## **ISSUE #2. THERE HAVE BEEN SOME LONG-STANDING MANAGEMENT DEFICIENCIES WITH THE BOARD.**

**BACKGROUND:** Past operational problems with this Board include: (1) budget problems that resulted in illegal deficit spending and suspension of enforcement cases because of insufficient funds; (2) inconsistent and inappropriate application of chiropractic practice laws and regulations; (3) staffing problems; (4) lack of cite and fine program; (5) no measurable consumer outreach or education efforts; (6) backlog of enforcement cases; (7) focus on micro-managing of staff rather than policy-making or long-range planning.

The Board has had some long-standing management deficiencies including budget shortfalls and excess reserves, low employee morale, inadequate data reporting systems, and lack of long-range planning. Recent staffing changes have resulted in promising improvements in the day-to-day management of Board operations. However, the Board itself as a policy making body needs to show more leadership in its enforcement of the Chiropractic Act, as opposed to relying on an overly technical, highly bureaucratic approach to chiropractic discipline.

**STAFF RECOMMENDATION:** *The Board should conduct a thorough review of all regulations and codify those that have been challenged and strengthen those that are considered weak. The Board should also consider streamlining certain operations such as switching to a biennial license renewal system and ensuring that it is recovering its costs for administering the California portion of the licensing examination. Board members should consider trends in the industry and establish proactive policies to address new enforcement challenges. For example, there are a number of practice issues that the Board should address, including the use of the title “chiropractic orthopedist”; the use of experimental devices and “alternative” products such as laser facelifts, hair analysis, use of homeopathic products, thermography, radiation detectors; written procedures for the use of x-rays; authority to conduct physicals for participation in school sports; establishing a minimum training requirement for non chiropractors wishing to perform adjustments or manipulation; and clarifying the standard on physical therapy procedures in chiropractic practice.*

**QUESTION #2 FOR THE BOARD:** *What were some of the long-standing deficiencies with the Board and what has been done to rectify these problem areas? What is the Board’s plan for addressing identified scope of practice issues?*

### **ISSUE #3. THE BOARD HAS BEEN CRITICIZED FOR A LAX ENFORCEMENT PROGRAM.**

**BACKGROUND:** The Board has made significant efforts to improve its enforcement program, such as shortening the time frame for the handling of complaints and investigations. Nonetheless, some have argued that the enforcement program for this Board is almost nonexistent. There are at least three areas where the Board could enhance its consumer protection role. For example, the standard time frame for the handling of complaints is still approximately six months, and a substantial number of investigations take from one to two years to complete before any legal action is taken. Furthermore, the Board's consumer satisfaction survey indicated that more than 50% of respondents were dissatisfied with the Board's disposition of enforcement cases. Like other boards that have gone through the sunset review process, the Board should attempt to reengineer its enforcement process to shorten the time frame for investigations.

Additionally, the Board does not have structures in place to receive information on civil actions brought against its licensees. Most health care related boards have established mandatory reporting procedures with the courts, insurance carriers, and hospitals on civil actions brought against their licensees. This information has proven to be a valuable tool in identifying potentially dangerous medical practitioners.

Lastly, the Board may want to improve its ability to take immediate action when public safety is jeopardized by one of its licensees. The Board currently has the authority to temporarily restrain a license. This process requires a judicial or administrative hearing first. Other health-related boards have explored the possibility of obtaining summary suspension authority in cases of egregious alleged violations of the law or where there is a dire threat to patient safety. A variation of this would be to further require that the Executive Director also obtain the concurrence of the Board's President prior to proceeding with the suspension (a "dual signature authority").

There would be very few instances where such authority would be necessary, but there could be circumstances where immediately removing a dangerous practitioner from practice is warranted. The current administrative Interim Suspension Order (ISO) and the judicial Temporary Restraining Order (TRO) are time-consuming and costly and not effective under these circumstances.

**STAFF RECOMMENDATION:** *The Board should adopt the best practices of other boards that have strong enforcement programs. Examples of these practices include streamlining complaint processing, better coordination with the Attorney General's Office on case investigation and prosecution, and enhanced disciplinary authority such as summary suspension. (Use of Dept of Insurance investigators for cases unrelated to insurance issues?)*

**QUESTION #3 FOR THE BOARD:** *What changes should the Board make to improve the effectiveness and efficiency of its enforcement program? What agencies does this Board use to investigate complaints before they may be referred for disciplinary action? Is the Department*

*of Insurance used, and are the cases investigated by this Department all related to insurance issues?*

**ISSUE #4. THE BOARD HAS BEEN UNABLE TO ADOPT REGULATIONS ESTABLISHING A “CITE AND FINE” PROGRAM SIMILAR TO OTHER BOARDS.**

**BACKGROUND:** The Business and Professions Code provides that “any board, bureau, or commission within the department” may adopt by regulation a system whereby a citation could be issued containing an order of abatement or an order to pay an administrative fine. Fines are capped at \$2,500 per violation, and the statute provides for a hearing procedure in the event the licensee elects to contest the order.

Because the Board is not “within the department” as required by the statute, it has not adopted a regulation to establish a cite and fine program as authorized for virtually all other licensing boards. This authority is a valuable tool for regulators because it provides an expedited procedure to enforce the law where the violation(s) may be relatively minor, and the formal due process required for license suspension or revocation would lead to prohibitive costs. It can also be a valuable tool when the violation(s) relate to financial issues and are not direct quality of care violations. According to the Board, adoption of the regulation is pending.

**STAFF RECOMMENDATION:** *The statute should be amended to authorize the Board to adopt cite and fine regulations in the same manner and to the same extent as other boards, bureaus, or commissions. It appears probable that this sort of amendment can be done through a legislatively enacted statute.*

**QUESTION #4 FOR THE BOARD:** *Is it your opinion that the Legislature has the authority to enact a cite and fine program for the Board?*

**ISSUE #5. THE BOARD MAY BE IN NEED OF ADDITIONAL POSITIONS TO OPERATE ITS LICENSING AND ENFORCEMENT PROGRAMS.**

**BACKGROUND** The Board currently has 10 staff positions, which is similar to other boards that have an equivalent number of licensees. However, because the Board is independent of the Department, it appears that it currently lacks staff resources to perform a range of functions that could improve its ability to carry out its enforcement program, as well as prepare and analyze data related to its enforcement operations. The Board does not have staff resources to manage electronic data that could provide valuable analytical information.

Presently, the Board has ample fund resources, and fees are relatively low in comparison to what physicians pay in licensing fees to the Medical Board of California. The Medical Board, however, is able to carry out a more sophisticated enforcement program; it can track and monitor its cases better; it can manage its expenses better; and it can respond to requests for data better. Chiropractors are practitioners of medicine, and it makes little sense to provide better tools to one regulator of health care providers than to others.

**STAFF RECOMMENDATION:** *The Board should continue to pursue creation of additional staff positions that would enable it to rapidly improve its data collection and management, better monitor its enforcement caseload, and improve follow-up on licensees that are subject to discipline.*

**QUESTION #5 FOR BOARD:** *Has the Board identified future staffing needs? Is the Board prepared to justify the addition of new staff to the Committee, as well as to the Department of Finance?*

#### **ISSUE #6. THE BOARD HAS AN EXCESSIVE FUND RESERVE OF ALMOST TWO YEARS OF BUDGETARY EXPENDITURES.**

**BACKGROUND:** The Board has over \$3.6 million in reserve for the current fiscal year, which is twice its annual budget. This reserve is expected to grow to \$4.5 million in two years. Clearly, this is an excessive amount to keep in reserve. Generally, a three- to six-month reserve is recommended as a prudent amount. Unlike other special funded programs, this Board was not subject to a General Fund transfer during the early 1990s state fiscal crisis. Thus, the Board's reserve level cannot be attributed to a one-time return of monies. Though it is difficult to isolate the cause of the growing reserve, this trend is troubling given that the Board has been criticized for lax enforcement efforts.

The Board should develop a plan for spending down its reserves. Options to do this include temporarily reducing fees, funding one-time projects such as information technology upgrades, and dedicating more resources to enforcement. Before selecting any of these options, the Board needs to carefully evaluate its long-term funding requirements.

**STAFF RECOMMENDATION:** *The Board should reduce its reserve by upgrading its information systems and initiating other one-time expenditures on programs such as consumer outreach. If Board revenues are projected to remain stable, the Board should consider reducing license renewal fees for a limited time period.*

**QUESTION #6 FOR BOARD:** *Has the board evaluated how to better manage its budget so that an excess reserve will not continue? What is the Board's long-term plan for ensuring adequate and stable funding for its operations?*

## **ISSUE #7. SHOULD THE COMPOSITION OF THE BOARD BE CHANGED?**

**BACKGROUND:** The Board's current composition of five professional and two public members may not be in the best interest of consumer protection. Generally, a public member majority for occupational regulatory boards or greater representation of the public where current board membership is heavily weighted in favor of the profession is preferred for consumer protection. Since any regulatory program's primary purpose is to protect the public and there is a perception that this Board has been less than proactive in performing its consumer protection role, increasing the public's representation on this Board assures the public that the profession's interests do not outweigh what is in the best interest of the public. *Requiring closer parity between public and professional members* is also consistent with both this Committee's and the Department's recommendations regarding other boards that have undergone sunset review.

**STAFF RECOMMENDATION:** *To be consistent with the general recommendation for increased public membership, Committee staff recommends removing one professional member from the Board and adding one public member.*

**QUESTION #7 FOR THE BOARD:** *How would restructuring the composition of the board to achieve greater public representation affect its mission?*